

SUPREME COURT OF CALIFORNIA

Deevy v. Tassi

21 Cal. 2d 109 (Cal. 1942) · No. S. F. No. 16754 · Decided October 30, 1942

SUMMARY

The California Supreme Court reviewed jury verdicts awarding compensatory and punitive damages for assaults and batteries committed while defendants attempted to repossess cattle under a chattel mortgage. The court held that a party may not use force to repossess personal property from a person who acquired possession lawfully, and that excessive force is not privileged even after dispossession. The judgment was affirmed as to compensatory damages but modified to strike punitive damages against the employer who had not personally participated in, directed, or ratified the violent acts.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Schauer, J. pro tem.; Gibson, C.J.; Shenk, J.; Curtis, J.; Carter, J.; Traynor, J.
JURISDICTION	California
DECIDED	October 30, 1942
DOCKET	S. F. No. 16754
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a judgment entered on jury verdicts awarding each plaintiff compensatory and exemplary damages for malicious assault and battery.
STANDARD OF REVIEW	The court reviewed the sufficiency of the evidence and alleged trial errors on appeal from a jury judgment, deferring to the jury's assessment of damages absent a verdict so grossly disproportionate as to shock the sense of justice. Evidentiary and pleading rulings, including refusal to permit an amended answer, were reviewed for abuse of discretion or prejudice. The court also applied a harmless-error analysis to alleged attorney misconduct and jury-instruction errors.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	J. A. Tassi et al. v. Dan Deevy et al.

TOPICS

assault battery punitive damages vicarious liability appellate procedure

PRACTICE AREAS

torts personal injury remedies evidence appellate procedure

QUESTIONS PRESENTED

1. Whether a mortgagee may use force to repossess chattels from a person who acquired possession lawfully.
2. Whether the force used against Nellie Deevy was privileged as a means of protecting or retaking possession of the cattle.
3. Whether the evidence supported the compensatory-damages awards.
4. Whether alleged misconduct by plaintiffs' counsel was prejudicial.
5. Whether evidence concerning J. Deevy's preexisting heart condition was admissible to show aggravation of injury.
6. Whether the jury instructions concerning repossession and future mental suffering were erroneous or prejudicial.
7. Whether the trial court abused its discretion by refusing to permit defendants to amend their answer to plead self-defense after the evidence had closed.
8. Whether advice of counsel that the repossession was lawful defeated punitive damages for malicious and oppressive assaults and batteries.
9. Whether J. A. Tassi could be held liable for punitive damages absent personal participation, authorization, or ratification.
10. Whether J. A. Tassi, as employer and owner, was liable for compensatory damages caused by Emmet Tassi's wrongful acts committed in the course of the business.

HOLDINGS

1. A person who has a right to possession of property may not use force to take it from another whose possession was lawfully acquired; the person entitled to possession must resort to legal proceedings.
2. A person defending land or chattels may not use means intended or likely to cause bodily harm in excess of what the person reasonably believes necessary to prevent or terminate the intrusion.
3. Compensatory damages for tortious bodily harm may include compensation for emotional distress, including mental suffering, fright, nervousness, anxiety, humiliation, indignity, and physical pain when those consequences naturally ensue from the tort.
4. An employer is not liable for punitive damages based solely on the wrongful acts of an employee unless the employer personally participated in, authorized, or ratified those acts with knowledge of the facts.

5. An employer is liable to third persons for an agent's wrongful acts committed in the course of a series of authorized business activities and while the agent is acting within the scope of employment, even when the particular wrongful act was willful and malicious.
6. Even assuming that inflammatory descriptions of a defendant or references to inadmissible specific misconduct were improper, reversal is not warranted without a showing of resulting prejudice.
7. Evidence of a plaintiff's preexisting medical condition is admissible when it tends to show that the defendant's tortious conduct aggravated that condition.

KEY QUOTATIONS

“The use of force against another for the purpose of recaption of a chattel, which the other is tortiously withholding from the actor, is not privileged if the other's possession was rightfully acquired.” (at 119)

“In the absence of such showing he is not liable in exemplary damages.” (at 125)

“The employer is liable to third persons for wrongful acts committed by his agent in and as a part of the transactions of the business of the agency.” (at 125-126)

FACTUAL BACKGROUND

Emmet A. Tassi, managing agent of the San Jose Cow Market, went to the Deevy ranch with helpers to take possession of cattle under a chattel mortgage, despite the Deevys' objection and without a court order. During the attempted repossession, Emmet Tassi and Sam Howe assaulted Dan Deevy and his daughter Julia in the barn, and Howe struck and rode over Nellie Deevy while the cattle were being driven onto a county road. J. A. Tassi owned the enterprise and employed Emmet, but the evidence did not show that J. A. Tassi personally participated in, directed, or ratified the assaults.

PROCEDURAL HISTORY

A jury returned verdicts for the plaintiffs against both defendants. The trial court entered judgment awarding each plaintiff compensatory and punitive damages. Defendants challenged the sufficiency of the evidence, damages, attorney misconduct, evidentiary rulings, jury instructions, and refusal to allow amendment of the answer to plead self-defense. The Supreme Court of California held that no error required a new trial, but modified the judgment by striking the punitive-damages award against J. A. Tassi and affirmed as modified.

DISPOSITION

affirmed

CASES CITED

- Silverstin v. Kohler & Chase, 181 Cal. 51, 183 P. 451 (1919)
- Biggs v. Seufferlein, 164 Iowa 241, 145 N.W. 507 (1914)
- McLean v. Colf, 179 Cal. 237, 176 P. 169 (1918)
- Sloane v. Southern California Ry. Co., 111 Cal. 668, 44 P. 320 (1896)

- Ware v. McPherson, 213 Cal. 120, 1 P.2d 433 (1931)
- Hart v. Farris, 218 Cal. 69, 21 P.2d 432 (1933)
- Bellman v. San Francisco High School District, 11 Cal. 2d 576, 81 P.2d 894 (1938)
- Pretzer v. California Transit Co., 211 Cal. 202, 294 P. 382 (1930)
- Moeller v. Market Street Railway Co., 27 Cal. App. 2d 562, 81 P.2d 475 (1938)
- Simoneau v. Pacific Electric Ry. Co., 166 Cal. 264, 136 P. 544 (1913)
- Lightner Mining Co. v. Lane, 161 Cal. 689, 120 P. 771 (1911)
- Willoughby v. Zylstra, 5 Cal. App. 2d 297, 42 P.2d 685 (1935)
- Vance v. Richardson, 110 Cal. 414, 42 P. 909 (1895)
- Marks v. Reissinger, 35 Cal. App. 44, 169 P. 243 (1917)
- Gerberich v. Southern California Edison Co., 26 Cal. App. 2d 471, 79 P.2d 783 (1938)
- Smith v. Schumacker, 30 Cal. App. 2d 251, 85 P.2d 967 (1938)
- Kerby v. Elk Grove Union High School District, 1 Cal. App. 2d 246, 36 P.2d 431 (1934)
- Andrews v. Seidner, 49 Cal. App. 2d 427, 121 P.2d 863 (1942)
- Stansell v. Safeway Stores, Inc., 44 Cal. App. 2d 822, 113 P.2d 264 (1941)
- Warner v. Southern Pacific Co., 113 Cal. 105, 45 P. 187 (1896)
- Davis v. Hearst, 160 Cal. 143, 116 P. 530 (1911)